

In the Supreme Court of the United States

OCTOBER TERM, 1991

MARK R. TAYLOR, PETITIONER

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT*

**MEMORANDUM FOR THE UNITED STATES
IN OPPOSITION**

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that the court of appeals erred in reversing an order suppressing evidence.

1. On May 9, 1990, petitioner was indicted by a grand jury sitting in the United States District Court for the Southern District of California. He was charged with conspiracy to possess methamphetamine with intent to distribute it, in violation of 21 U.S.C. 846, and possession of methamphetamine with intent to distribute it, in violation of 21 U.S.C. 841(a)(1).

Petitioner moved to suppress evidence seized by government agents from petitioner's automobile at the San Clemente, California, permanent immigration checkpoint. The suppression hearing showed that Border Patrol agents referred petitioner's vehicle to a secondary inspection station because of the nervous

behavior of petitioner and his two passengers. An agent, with petitioner's permission, then searched the trunk of the car and found neither aliens nor drugs. When the agent saw that petitioner became increasingly nervous during the search, the agent detained the car an additional 60 seconds to allow a drug-detecting dog to sniff the car. The dog alerted on the driver's door; the agents then searched the car and discovered methamphetamine, two handguns, money, and drug paraphernalia.

2. The district court suppressed the evidence that was seized at the checkpoint on the ground that petitioner was detained beyond the time necessary to complete the immigration inspection. The court found that the additional detention to conduct the dog sniff was not supported by reasonable suspicion and consequently violated the Fourth Amendment.

3. The court of appeals reversed. Pet. App. 1a-12a. The court held that the Fourth Amendment permitted a brief continuation of an otherwise proper immigration detention at a permanent checkpoint predicated upon an articulable suspicion of criminal activity. The court found that the agent's observation that petitioner became increasingly nervous and uneasy following the initial check for aliens constituted articulable suspicion, and that the subsequent brief dog sniff did not exceed the boundaries of reasonableness.

4. Petitioner contends (Pet. 8-18) that his Fourth Amendment rights were violated because the government agents improperly conducted a drug smuggling investigation after the immigration inspection was completed. Whatever the merits of petitioner's contention, it is not presently ripe for review by this Court. The court of appeals' decision places petitioner in precisely the same position he would

have occupied if the district court had denied his motion to suppress. If petitioner is acquitted following a trial on the merits, his contention will be moot. If, on the other hand, petitioner is convicted and his conviction is affirmed on appeal, he will then be able to present his contention to this Court, together with any other claims he may have, in a petition for a writ of certiorari seeking review of a final judgment against him. Accordingly, review by this Court of the court of appeals' decision would be premature at this time.*

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

KENNETH W. STARR
Solicitor General

JANUARY 1992

* Because this case is interlocutory, we are not responding on the merits to the question presented by the petition. We will file a response on the merits if the Court requests.